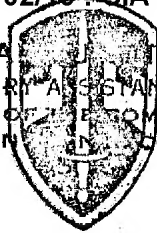


HEADQUARTERS  
UNITED STATES MILITARY ASSISTANCE COMMAND, VIETNAM  
OFFICE OF THE COMMANDER  
APO SAN FRANCISCO 96222



RECORDS

26 June 1968

MEMORANDUM FOR THE RECORD

SUBJECT: Letter from Kien Giang Judge

- REFERENCE:
- A. Memorandum for Ambassador Komer, 7 June 1968, same subject.
  - B. Memorandum for the Record, 7 June 1968, Trial of Corruption Cases.
  - C. Memorandum from Kien Giang Judge and Translation of 10 June 1968: Remarks about the Causes of Corruption in Vietnam.
  - D. Constitution of the Republic of Vietnam, 1 April 1967: Articles 88-91 on the Inspectorate

1. The Judge's memorandum (referred to in paragraph 6 of Reference A) has been received and is attached hereto, along with an English translation.
2. The memorandum treats the following subjects:
  - Types and location of corruption
  - Results of corruption
  - Causes of increase in corruption
    - Political and psychological
    - Anti-corruption agencies - inadequacy thereof

3. The last topic (anti-corruption agencies) has important legal aspects. Suggestions of the Judge are as follows:

The Office of Inspection

- a. The Office of Inspection is not independent since the resulting legal cases are processed through courts staffed and operated by military men. Also, that Office should have the authority to discharge from their jobs public officials of the rank of Province Chief or lower.

Comments: The pertinent provisions of the Constitution (Reference D) are appended hereto. Pursuant to Article 89 (1), the Inspectorate (yet to be created) will be empowered to propose disciplinary measures or request prosecution by competent courts. It is doubtful that the present temporary Office of Inspection can acquire greater powers

227

- b. The Military Field Courts and the Special Court are inadequate for the job of trying corruption cases. The judges and prosecutors are military men and hence are subject to pressure from the military establishment and specifically from higher ranking officers.

Comment: This problem is endemic to military courts and is treated by a requirement that the court be constituted largely of officers superior in rank to the accused. It might well be advisable, however, that civilians rather than military men be appointed as judges and prosecutors of the Special Court. This would go far toward getting the cases of military men, accused of corruption in their conduct of political positions, out of the hands of their colleagues and under the cognizance of qualified civilian judges and prosecutors. This possibility will be investigated further. It should be noted in passing that the present military personnel of the Special Court are on detached duty from their service and are paid by the Ministry of Justice.

The Special Court was created to try cases of economic offenses and corruption. (See Reference B, attached hereto). It was given jurisdiction over cases involving P50,000 or more, those involving smaller sums to be tried by the Military Field Courts. In accordance with Decree-Law No. 29/67 of 31 July 1967, the field courts now hear cases of bribery, corruption and embezzlement involving government, military or civilian personnel, when the amount concerned is less than P500,000.

- c. The present anti-corruption agencies (Office of Inspection, Special Court and Field Courts) do not have an effective presence at the Province level; they are not close to the people and it is usually not practical for a citizen to denounce cases of corruption to them.

Comment: This is no doubt true. Something must be done to fill the gap. The inspection agency could have Provincial offices, with a telephone and Post Office Box Number known to all. The Special Court may organize local sessions in the Provinces. Where the existing Military Field Courts are overburdened with work, additional ones may be organized, pursuant to Decree-Law 049/67 of 30 October 1967. It seems desirable that offenders be tried in the locality where the offense was committed rather than at Region or in Saigon.

The Office of Inspection is a going enterprise, as indicated by this note of 15 March 1968, received from the Public Administration Division of USAID:

"To eradicate corruption, an Office of Inspection was constituted by Prime Minister Ky in March 1966. It is composed of thirty inspectors, and functions under the Executive Branch of the Government. Its purpose is to investigate alleged regulatory violations by both civilian and military government employees and to discipline those found guilty after a hearing and review.

Under the new Constitution, the Inspectorate will maintain its function but is expected to operate under the Ministry of Justice. This change shall be effected shortly after the institution of the new Supreme Court, which is to be by November 1968 as stipulated in the Constitution. Its personnel will then be nominated, one-third by each branch of the Government.

During 1967 the Office of Inspection completed 100 investigations resulting in disciplinary action against 167 persons involved in illegal actions. There are 30 investigations presently pending."

- d. The investigative system is inadequate. There are not enough trained investigators. There should be created another investigative organization, to parallel that of the National Police, similar to that of the former Gendarmerie.

Comment: The shortage of capable investigators is notorious. The Military Judicial Police, attached to the military courts, supplement the investigative work of the inspection agency and the National Police on corruption cases. Development of a strong and effective Inspectorate seems to be the sine qua non of an effective anti-corruption program. Creation of anything similar to the old Gendarmerie appears out of the question. Its investigative functions were taken over by the Military Police, which have jurisdiction to investigate unlawful conduct by military personnel.

- 4 -

- e. The jurisdiction over corruption offenses exercised by the Special Court and the Military Field Courts is not in accordance with the new Constitution. The regular civilian courts should adjudicate these cases.

Comments: The Judge has a persuasive technical argument here. However, there has been no showing that the civilian judges and prosecutors are now able to handle the grievous problem of corruption in an authoritative and expeditious manner. For the present, it seems that the special anti-corruption agencies operating out of Saigon and the Regional capitols will have to prosecute the campaign. However, a greater civilian legal presence can be (and is being) gradually inserted, as indicated by comments above. Also, certain economic offenses, i.e., illegal transfer of money, are said to have been brought under the cognizance of the civilian courts. The day will be welcome when the regular judicial system is able to assume the full burden and responsibility for handling corruption cases.

Legal Counsel

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Attachments:

References A, B, C, and D

225

Next 1 Page(s) In Document Exempt

7 June 1968

MEMORANDUM FOR THE RECORD

SUBJECT: Trial of Corruption Cases

1. The "Special Court" was established by Decree-Law No. 003/66 of 15 February 1966, to try offenses in the area of corruption, during the existing declared state of war. An English translation is attached hereto.

2. The Military Field Courts also have extensive jurisdiction in the field of corruption, where the monetary amount involved falls below stated limits. In addition, it is said that the Civilian Courts have jurisdiction in some types of cases.

3. The proceedings of the Special Court and of the Military Field Courts are expeditious, without the extensive pre-trial investigation employed in the other courts. Maximum penalties may be applied, without appeal.

4. Investigative reports on possible cases of corruption are received by the Prosecutor of the Special Court from the Procuratorate, the National Police or the Military Police. The Prosecutor studies the case in question and sends it to the Prime Minister if it appears to justify prosecution. The Prime Minister may then order the case to trial by the Special Court.

[Redacted Signature]

Legal Counsel

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15 Feb 66

DECREE-LAW #003/66, of 15 Feb 66, prescribing the activation of "Special Court" to try the offenses of economic speculation, stocking of goods, illegal transfer of money, bribery, embezzlement.

The Chairman of the National Directory;

- Considering Constitutional Act dated 19 Jun 65;
- Considering Decision #3/QLVNCH/QD dated 14 Jun 65 of the RVNAF Generals' Meeting;
- Considering Decree #001/a/CT/LDQG/SL dated 19 Jun 65 and subsequent documents prescribing the composition of the Office of the Prime Minister;
- Considering Ordinance #1/UBLDQG dated 24 Jun 65 promulgating the State of War throughout the territory of the Republic of Vietnam;
- Considering Decree Law #4/65 dated 19 Jul 65 prescribing the punishments taken against the offenses of economic speculation, bribery, hooliganism, neutralism and pro-communism;
- Considering Decree Law #11/62 dated 21 May 65 prescribing the activation of Military Field Courts;
- Upon the recommendation of the Prime Minister;
- After the deliberation and approval of the National Directory;

#### ISSUES THE FOLLOWING DECREE LAW:

ARTICLE 1. A "Special Court" will be activated, during the state of war period. It has jurisdiction over the following offenses:

- Economic speculation, illegal transfer of money, smuggling, violation of customs regulations, as prescribed by Decree Law #4/65 of July 19, 1965. Items 2, 3, 4, 5, 6, in case of property or assets worth VN\$50,000 and more.
- Bribery, corruption, embezzlement, as prescribed by Decree Law #4/65 of July 19, 1965. Items 7, 8, 9, in case of property or assets worth VN\$50,000 and more.

ARTICLE 2. The Special Court's judicial area includes the whole national territory. Its main office is located in Saigon. The Special Court may organize local sessions in the provinces when necessary.

ARTICLE 3. The Special Court will have full competency over both the military and civilian offenders.

ARTICLE 4. The Special Court will be composed of:

- A President to be appointed by a decree from the Chairman of the National Directory. Upon the recommendation of the Prime Minister.
- Two assessors to be appointed by Prime Minister's decrees.
- A Prosecutor assisted by one or several deputy prosecutors, to be appointed by Prime Minister's orders upon the recommendation of the Minister of Justice.

ARTICLE 5. The Clerk's office is placed under the management of a clerk general who is helped by an adequate number of court clerks, clerk assistants and typists. They are appointed by orders issued from the Minister of Justice.

ARTICLE 6. Before assuming their function, all the members of the Special Court must take a written oath at the Supreme Court.

ARTICLE 7. The procedures to be applied at the Special Court will be the same as those applied at Military Field Courts and prescribed by Decree Law #11/62 of May 21, 1962 and Decree Law #4/65 of July 19, 1965, Item 25.

ARTICLE 2. The Prime Minister is responsible for issuing warrants, stating the reason, and directly remanding the accused to the Special Court without examination by the Examining Magistrate.

ARTICLE 3. The Prime Minister, Ministers and Secretaries will carry out this Decree Law to the extent authorized by their respective duties.

This Decree Law will be published in compliance with emergency procedures.

Saigon, 15 Feb 1966

Signature: Lt. Gen. Nguyen Van Thieu



Remarks about the Causes of Corruption  
in Vietnam

I. Generalities

Corruption has become increasingly serious and most agencies, military and civilian, are affected by it.

Moreover, corruption exists under such different forms as smuggling, illegal transfer of currency, extortion carried out by high ranking officials, and theft of private property by soldiers or policemen during an operation.

In order to have a better understanding of this situation, let us take a general look at some aspects of corruption which are in existence at the provincial level. It originates with the Province Chief down to the Chief of Service, Hamlet Chief and Chief of a Popular Forces post.

1. Within the framework of the Sub-Sector

a. Section I. Corruption is reported in recommendations for promotion and particularly in officer assignments (any officer who would like to be assigned to a non-combat position or to remain in the Province instead of being assigned to a remote outpost, bribes his superiors, etc.).

b. Section II. Corruption is reported in the issuance of informant certificates to draft evaders, in the utilization of the secret fund (using the fund for personal purposes instead of using it for intelligence purposes), and in the arrest of Viet Cong suspects (forcing the innocent to pay a bribe in exchange for a release).

c. Section IV. Corruption is reported in the illegal sale of gasoline, mosquito nets and blankets which belong to the Army.

d. Section V. Money is shared with contractors who print leaflets.

Corruption is reported in the preparation of claims of war victims for damages.

Gifts reserved for soldiers are stolen.

Furthermore, these remarks on some aspects of the corruption in existence in the Sub-Sector do not include corruption in the Military Security Service and section, administrative company, and profits gained by having soldiers guard gambling houses.

2. At the Administrative Headquarters.

a. Economic Office: Corruption is reported in the issuance of permits to set up business houses and firms, to buy such controlled goods as sugar, milk, etc., and to ship foodstuffs such as rice, fish.

b. Administrative Service: Corruption is reported in the issuance of permits for construction, authentication of papers, and in decisions dealing with public land.

c. Military Affairs Service: Corruption is reported in the issuance of permits for the transportation of goods such as gasoline, oil, etc.

d. Financial Service: Money is received from contractors who are provided construction materials or given contracts to build public offices.

These are a few cases of corruption that are carried out under many more complicated forms, and almost all agencies in the provinces have been affected by this incurable disease.

The following consequences result from this situation of general corruption:

1. Government policy is not being properly implemented. It is, however, noted that the policy devised by the Government was considered a good one, but was doomed to failure as a result of corrupt practices of incompetent cadres.

Corruption is reported in the recruitment of incompetent cadres instead of good ones due to bribery.

Corruption is also reported with regard to the budget, materials, etc.

Cadres do not conduct themselves properly (they ask people for money, food, destroy fruit trees, etc.)

2. The people have an uncooperative attitude towards the government which results from their loss of confidence in the government due to corruption. (For example: they are uncooperative in giving intelligence information:

- Intelligence personnel domineer over the people. Many people have been wrongly accused of being Viet Cong in order to extort money from them. For the greater part, people dislike the security personnel.

- Because of the corruption of intelligence personnel, the enemy can buy them over easily.

- The secret fund has been the subject of graft so that there is not enough money to buy information.

- Many informants are those having money to buy informant certificates in order to avoid the draft. However, they are afraid to go out to obtain information.)

We can conclude that as long as corruption remains, we can never defeat the Communists.

## II. Causes of the increase in corruption.

We can classify the causes of corruption as follows:

Political and psychological conditions.

Lack of power of anti-corruption agencies.

### A. The political and psychological reasons.

1. The political situation is always unstable. Government leaders are worried about their tenure in office and want to have money for their futures. Therefore, corruption has begun at the higher levels (in the cases of General Khanh and General Co).

2. Government leaders have not been supported by the people. They, therefore, take bribes in order to have money to buy the support of groups or factions.

3. Faction tendency. The leadership, afraid of being overthrown, combines with many factions to maintain power. The corruption of subordinates are then covered up in order to guarantee their loyalty.

4. The standards for selection of personnel are not dependant on talent and virtue but on factions and the amount of the bribe offered for a position. (A former Kien Giang Province Chief said that in order to be assigned as Province Chief, three million piasters must be paid.) (In many cases, low ranking personnel had been appointed to some position for the purpose of taking bribes and sharing it with their superiors.)

5. Policies of military detailees have helped the expansion of corruption.

They are knowledgeable about military subjects, but cannot control the dishonest actions of their personnel.

When military personnel are detached for administrative duties and make mistakes, they are usually reassigned to the army. Therefore, most corrupt military men have not been afraid of punishment or of the officials.

6. The leadership has declared it will ban corruption, but they are the real grafters. Thus corruption has increased day after day.

7. With regard to the attitude of the population, most of those involved in corruption seldom go to jail so that the honest man seems very stupid.

8. The people feel that most corrupt officials and military men have been ready to receive bribes.

Conclusion: The above causes depend on the leadership. If they are honest, recruit and assign personnel on the basis of their qualifications, and determine to eliminate corruption, it will decrease.

B. Powerless agencies to suppress corruption.

The two agencies in charge of the elimination of corruption are:

- Institute of Inspection
- Special Court and Military Field Court.

In addition, the National Police, in the conduct of preliminary investigations, also influence the suppression of corruption.

The Institute of Inspection has not been independent and therefore, all corrupt practices of high ranking officers have not been investigated properly. It has seemed separated from the people (only one in Saigon), so that people are afraid to accuse a corrupt official for fear of revenge. Furthermore, it has no experience in conducting investigations (being recently established).

Conclusion: To have worthwhile results of investigations, the Institute of Inspection should:

- Be independent and avoid interference and recommendations from outside agencies.

- Have special powers to dismiss certain corrupt officers and military personnel.

- Join forces with the Court to punish dishonest personnel.

The Special Court and the Military Field Court.

a. The Military Field Court was established by Decree Law 11/62, dated 21 May 1962, in order to:

- Judge all military personnel who committed misdemeanors or serious offenses.
- Judge all civilians who:
  - Violated national security laws
  - Violated military regulations
  - Engaged in speculation, illegal money transactions, contraband, influence peddling (under 50.000), violation of the national obligation, betrayal, pro-communist and neutralist activities and hooliganism.

Judgment is final in all of these cases, with no appeal to the Appellate Court or Court of Cassation.

b. The Special Court (established by Decree Law 3/66, 15 February 1966, in order to hear cases involving military and civilians who are charged with bribery, influence peddling, appropriation of public funds, speculation, illegal money transfers, dealing in contraband, violation of customs - where the amount exceeds 50.000).

Generally, the Prime Minister often signs the trial order. In reality, however, bringing an offender before the Court primarily depends upon the Government Commissioner who establishes the records (files) before sending the case to the Court.

Conclusion: The Military Field Court and the Special Court have been given jurisdiction in corruption cases, while the civilian court has no jurisdiction in this area. However, the Military Field Court is ineffective because of the following weaknesses:

a. The judges are military and must obey their superiors. It is therefore difficult for them to freely prosecute their higher ranking officers. Moreover, if a General intervenes in the defense of the accused, the Military Courts cannot oppose the higher authority.

b. The Military Court has full power to judge, but no one to inspect or review its decisions. It can easily make mistakes, become dictatorial, or involved in bribery. (The Special Court had asked for money to set free several American prisoners. The true facts were published by the press, but the judge, who was denounced as corrupt, was given a medal instead of being discharged.)

c. The military judges are not professionally trained in law. They judge with emotion and allow interference by others. They, therefore, lack the ability to judge competently.

d. The total number of Military Field Courts is four (one for each CTZ). The one Special Court is located in Saigon. These courts do not have the faculties for examining all the corruption cases.

e. The Military Courts are not close to the people. (As we have mentioned, the people only dare to denounce corrupt officers if the latter are not of their faction. The people only trust in honest judges, who really want to resist and eliminate corruption. If corruption is denounced by the people in some areas, it may not be because it has more corruption than elsewhere, but that its Court is trusted more by the people.)

f. The Military Court is not in conformity with the provisions of the Constitution. According to the Constitution, the functions of the Institute of Inspection are to be carried out independently. As further action must then be taken by the Magistrates, which in effect permits military men to continue to judge the corruption cases, there is no conformity with the Constitution.

g. The Military Field Court and the Special Court have a shortage of investigative personnel to ascertain those guilty of bribery or extortion. (The Civilian Court has one professional investigation office. That is the Examining Magistrate's office, which is controlled by a Magistrate. However, the Magistrate only reviews serious and important cases or when the initial examinations are unclear. Generally, most of the records are initially investigated by the National Police Service. Formerly there were two services belonging to the Civilian Court. Both were responsible for initial examinations. They were the Police Service and the Gendarmerie. After the demobilization of the Gendarmerie, the National Police remained as the only service to take charge of initial investigations and send the records to the Court. (Actually, a country which is progressing slowly needs two investigative services working at the same time in order to efficiently inspect each other.)

Conclusions: The number of persons guilty of corruption can be decreased if:

1. The leadership (the first ones being the Prime Minister, Minister of Justice and the Inspector General) must be honest, energetic and upright in eliminating corruption.
2. The Constitution must be applied properly. Those guilty of corruption must be sent for trial to an independent Civilian Court with full jurisdiction (even though the offenders are military). Certainly, it will be necessary to have a rational reorganization in order to have a more efficient judicial system.)
3. The Gendarmerie should be reestablished with the mission of paralleling National Police Service investigations.
4. The Inspector must be given full power to discharge certain types of military personnel or civilian officials who are guilty of corruption (from the Province Chief downward).

(For the third recommendation, we do hope the Allied American Government could help financially in establishing this Service as well as assisting the Ministry of Justice, both physically and intellectually, in establishing and maintaining an independent and efficient judicial system -- so that it can become closer to the people.)

(Translated 10 June 1968)

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